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| 09/941,521 | 08/29/2001 | Tony N. Kfoury | CS10289 | 7363 |

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Roland K. Bowler II
Motorola, Inc.
Intellectual Property Section
600 North U.S. Highway 45
Libertyville, IL 60048

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| EXAMINER |
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CHIANG, JACK

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2642

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 12

Application Number: 09/941,521
Filing Date: August 29, 2001
Appellant(s): KFOURY ET AL.

Roland K. Bowler II
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 28, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

Claims 1-28 are pending and the subject of the instant appeal.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims do not stand or fall together, however, appellant provides the same exact argument for all the claims. Thus, examiner believes that the claims should stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

| <u>Number</u> | <u>Name</u> | <u>Patented date</u> | <u>Filing date</u> |
|---------------|--------------|----------------------|--------------------|
| 6,593,914 | Nuovo et al. | July 15, 2003 | Oct. 31, 2000 |
| 6,349,221 | Wolf et al. | Feb. 19, 2002 | June 16, 1999 |
| 4,267,409 | Baldoni | May 12, 1981 | |

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

CLAIMS

102 Rejection

10a. Claims 1-8, 10, 14-28 are rejected under 35 U.S.C. 102(e) as being anticipated by **Nuovo et al. (US 6593914)**.

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Regarding claim 1, Nuovo shows:

sensing an orientation of an input area (56) relative to a housing (52) (col. 3, lines 45-50);

Configuring a display image orientation on a display (54, figs. 4-5) relative to the housing (52) as a function of the orientation of the input area (56) (col. 3, lines 60-63).

Regarding claim 7, Nuovo shows:

A housing (52);

An input area (56);

A display (54);

A sensor (col. 3, lines 45-50);

A display system changing an orientation on a display (54, figs. 4-5) relative to the orientation of the input area as a function of the orientation of the input area (56) (col. 3, lines 45-63).

Regarding claim 18, Nuovo shows:

A physically rotatable keypad (56);

A display and display drivers (see 54, figs. 4-5);

A sensor (col. 3, lines 45-50);

A processor for receiving the sensor signal and in response thereto modifying the display drivers for forming the display image on the display (54, figs. 4-5) with an

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orientation that is a function of the orientation of the keypad (see 54, 56 in figs. 4-5) (col. 3, lines 45-63).

Regarding claim 24, Nuovo shows:

A housing (52);

A pivotal keypad (56) having at least first and second positions (see figs. 4-5);

A display (54) having a first display configuration when the keypad is in the first position (i.e. fig. 4);

The display (54) having a second display configuration when the keypad is in the second position (i.e. fig. 5).

Regarding claim 26, Nuovo shows:

A housing (52);

A keypad (56);

A display (54);

The display system (54) nearer the lower portion (left side) of the housing than the keypad (56), the keypad (56) nearer the upper portion (right antenna side) of the housing than the display (54).

Regarding claims 2-6, 8, 10, 14-17, 19-23, 25, 27-28, Nuovo shows:

The orientation of the input area (56) includes at least one of sensing the orientation through input through a dome sheet array (see fig. 3);

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The physical rotation of the input area and the electron rotation of the display (figs. 4-5);

The sensing or position detecting sensor of the orientation of a keypad (56, col. 3, lines 45-52);

Remapping keys based on a look-up table relative to key sensors (col. 3, lines 45-52, 26-44);

Modifying image forming display drivers in response to sensing the orientation of the keypad (i.e. figs. 4-5);

The 90 or 180 degrees rotation (col. 2, lines 36-43);

The keys and its key housing (see 56), key sensors and its sensor housing (84 in fig. 3);

The key sensors are one of the resistive, capacitive and bubble switches (keymat 82);

The keypad and the display in the first and second positions (figs. 4-5).

103 Rejection

10b. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Nuovo in view of Wolf et al. (US 6349221)**.

Regarding claim 9, Nuovo shows the keypad (input area).

Nuovo differs from the claimed invention in that it does not explicitly teach that the keypad is a touchscreen.

However, push-button type keypad and touchscreen type keypad are the most common types of keypads in electronic devices. This is also shown by Wolf's keypad (5, col. 2, lines 22-27).

Hence, the basic concept here is to provide a rotatable keypad, this is taught by Nuovo. Therefore, it would have been obvious for one of ordinary skill in the art to use Nuovo as it is, or to use a touchscreen keypad in Nuovo with/without the teaching of Wolf, because these types of keypads are considered to be alternative to each other, whether the touchscreen or the push-button type is used, they should be considered as a variation of the Nuovo's device, as long as Nuovo's basic concept of providing a rotatable keypad is substantially unchanged (see also col. 2, lines 22-27 in Wolf).

10c. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Nuovo in view of Baldoni (US 4267409)**.

Regarding claims 11-12, Nuovo shows the keypad (56).

Nuovo differs from the claimed invention in that it does not explicitly show the details of the keypad, such as the keypad support includes projections, the keypad membrane includes notches, and the keypad disc includes tabs and slot.

However, Baldoni, in a keypad, teaches providing a keypad support includes projections (12, 15), a keypad membrane includes notches (22), and a keypad disc includes tabs and slots (14 for receiving 15).

Hence, the concept of providing a keypad is well taught by Nuovo, therefore, it would have been obvious for one of ordinary skill in the art to adapt the method of Baldoni in Nuovo when assembling a keypad, this simply can be considered as an intended use of Baldoni, or a variation of Nuovo, as long as the basic concept of providing a rotatable keypad is substantially the same.

(11) Response to Argument

In response to the Discussion of Issues 1-3, the argument in Issue 1 has been repeated in Issues 2-3. Therefore, the examiner's response on Issue 1 would be a collective response for all Issues 1-3.

Before the examiner goes on to discuss appellant's Issues 1-3, the examiner would first lay out the time table for various communications between the examiner and the appellant through the prosecution of this patent application.

8/29/01 the application was filed;
10/27/03 an IDS was filed;
2/2/04 the first Office action was mailed;
2/5/05 a first amendment (labeled as 37 CFR 1.115) was filed;
3/3/04 the final Office action was mailed;
4/8/04 a 37 CFR 1.131 and a response (labeled as 37 CFR 1.116) were filed;
4/22/04 the advisory action was mailed;
4/28/04 an appeal brief was filed.

In Issue 1, page 4 of the appeal brief, appellant first argues that "It is noted that the subject Affidavit was submitted in response to a final rejection because the Examiner's first Office action was made final".

The examiner disagrees with appellant. The examiner's first office action was mailed on 2/2/04, and in response to appellant's first amendment on 2/5/04, the final

action was made on 3/3/04. This is not a first-office-action-made-final situation.

Therefore, appellant's statement is simply incorrect.

Through telephone interviews conducted on 5/6/04 between the examiner, his supervisor and the appellant, it appeared that appellant was arguing that the final office action dated on 3/3/04 was a premature final, because appellant believes that the paper filed on 2/5/04 was a preliminary amendment; not a response to the office action mailed on 2/2/04.

The examiner disagrees. First, from the filing date (8/29/01) of the application to the mailing date (2/2/04) of the first office action, there were at least **1245 days** (almost 3 ½ years) for appellant to submit a preliminary amendment, but there was none submitted timely. Second, applicant had submitted an IDS on 10/27/03, but again there was no preliminary amendment filed with the IDS. Third, after the mailing of the first Office action, there was a "preliminary amendment" rushed (**faxed**) into the office **3 days** after the mailing of the first office action. Since the amendment was filed and received after the mailing date of the first Office action, it was not considered as a "preliminary amendment".

Further, if appellant is arguing "a premature final Office action", then this issue is **not appealable**, it should be a **petitionable issue**.

On page 4 of the Brief, appellant further argues that "... the examiner has not objected to the form or substance of the Affidavit. The affidavit is of record and must be entered as it was timely submitted and has not been the subject of an objection".

The examiner disagrees. In the Advisory Action mailed on 4/22/04, the examiner clearly checked box 5 which states "the affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented". This is a full response to the 131 affidavit because the affidavit was filed after the final office action, and the examiner retained the same rejections through the first and final rejections.

In fact, before the final rejection was mailed on 3/3/04, there were almost another **30 days** between appellant's first amendment (2/5/04) and the mailing of the final rejection (3/3/04), again, there was no Affidavit timely filed.

From a cursory review of the 131 affidavit, it is apparent that the 131 affidavit is defective because it does not show diligence, but objection to the 131 affidavit is unnecessary because it has not been entered.


Further, appellant does not have any specific argument regarding the art rejection, therefore, it is believed that the claimed limitations are met by the cited references.

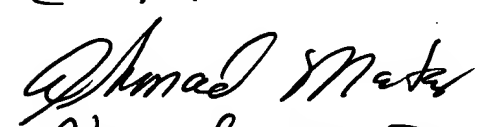
In conclusion, appellant does not have an appealable issue, and therefore, it is believed that the rejections should be maintained.

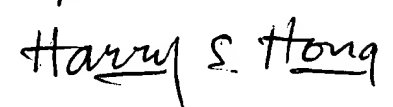
(12). Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Chiang whose telephone number is 703-305-4728. The examiner can normally be reached on Mon.-Fri. from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on 703-305-4731. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jack Chiang
Primary Examiner
Art Unit 2642

Conferee :

Ahmad MATAR
Supervisory Primary Examiner

CONFEREE

PRIMARY EXAMINER
GAU 2642